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## WORKING PAPER SERIES

### **CULTURAL DISTRICTS AND THE ROLE OF INTELLECTUAL PROPERTY (DISCTINCTIVE SIGNS)**

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# CULTURAL DISTRICTS AND THE ROLE OF INTELLECTUAL PROPERTY (DISCTINCTIVE SIGNS)

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Starting from the idea that every region has its claim to fame, the purpose of this presentation is to determine how the intellectual property (IP) system may be used by the producers to enhance, preserve or even establish such reputation. China silk, Venetian Glass all were much sought after treasures, the reputation of which was carefully built up and traditionally handed from one generation to the other. Christopher Columbus sailed from Europe to chart out a new route to capture the wealth of the renowned Indian spices.

As I said before, the object of today's presentation is to explore possible ways of using the IP system for the protection, development and commercialization of a country's culture-based assets, given the alternative forms of protection that are currently available both at the national and international level.

In this presentation I will more particularly focus on industrial cultural districts producing material goods. In other words I will essentially consider the case of localized **districts** made up of small firms producing culture-based goods, which have been essentially created for commercial purposes.

This preliminary limitation will allow me to distinguish such culture-based industries from other forms of cultural production deriving from what is designated as "Folklore" or "Traditional cultural expressions", the production of which does not necessarily obey to commercial considerations [but works more as a reflection of a community's history, religion,

values, and cultural and social identity], and the protection of which is currently the object of a separate debate at the international level.

### **1- Existence of national cultural districts worldwide**

When we talk about "cultural districts" we refer to the existing geographical areas producing goods (particularly handicrafts) resulting from local artistic and cultural traditions, such as jewelry, rugs, carpets, pottery, glass, leather, wood-carving, and textiles. These agglomerations of economic activities for the production of culture-based goods were first qualified as "cultural districts" by Economists.

From a commercial viewpoint, it can be said that like any other businessperson, artisans and visual artists that have been able to establish a certain quality and reputation for a given product in a specific geographical area, cannot allow competitors to free-ride on their established reputation (which is also the secret of their success) by letting others copy their products or use the name of their geographical region on similar products of a lower quality or coming from another region, which may ultimately tarnish the reputation of the traditionally made original product. Accordingly, the original producers from the region should make reasonable efforts to prevent such knowledge or reputation from being misappropriated by third parties, by using the tools provided by the IP system.

### **2- Overview of the existing intellectual property legal instruments for collective ownership (distinctive signs such as trademarks, collective trademarks, certification trademarks, industrial designs, geographical indications)**

As a preliminary introduction I would like to point out that the various national systems for the protection of indications of geographical origin might be roughly divided into three categories:

- \*trademark law provisions devoted to collective marks and/or certification and guarantee marks;

- \*specific protection systems for geographical indications and appellations of origin; and

- \*more general laws focusing on business practices, including laws and legislation pertaining to unfair competition and consumer protection.

Let us now revert to the first category and more particularly to collective marks.

\*Collective marks:

***Definition: collective marks are marks used to distinguish products or services provided by a group of enterprises, generally members of an association.***

A collective mark is generally owned by an association or cooperative which exclusively grants its members the right to use the mark if they comply with the requirements fixed in the regulations concerning the use of the collective mark (e.g. quality standards, geographical origin). A collective mark may be an effective way of jointly marketing the products of a group of enterprises that may individually find it more difficult to make their individual marks recognized by consumers and/or distributed by the main retailers, while preserving a high level of quality.

**Ex. No.1:** For example, artisans and artists may also use a collective trademark in labeling, packaging, and promotional material in order to jointly market their products and enhance product recognition.

*Note: It is to note that artisans, artists, crafts enterprises often rely on employees or independent contractors (marketing consultants) to develop a new label, logo, product packaging or any promotional material. It is therefore important to ensure contractually that they will actually own all the corresponding IPR's or use them with permission.*

**Ex. No.2:** Most likely local crafts products will have certain characteristics which are specific to the products originating in a given region, and which may be linked to the historical, cultural and social conditions of the area. Again a collective mark may be used to communicate such features and become the basis for marketing the products, thus benefiting all members of a given producer's association.

As far as modalities are concerned, most countries require that collective mark applicants supply a copy of the regulations which govern the use of the collective mark. Such regulations generally define the area of production and also indicate who is authorized to use the mark, the conditions of membership of the association, conditions for use of the mark, sanctions against misuse, etc.

\*Certification marks:

**Definition:** *a certification mark is a mark indicating that the products or services in relation to which it is used are certified by the owner of the mark in respect of one or more*

*specific criteria, such as geographical origin, material, method of manufacture, quality... or other characteristics.*

Certification marks are given for compliance with defined standards, but are not confined to any membership. They may be used by anyone who can certify that the products involved meet certain pre-established standards (ex: distinguishing characteristics may include geographic origin, quality of material used, or the mode of manufacture).

This is the main difference with collective marks, which may only be used by a specific group of enterprises members of an association.

It is to note that when a geographical name is registered as a certification mark, the national legislation usually assigns to the applicant the task of defining, in the regulations governing the use of the proposed mark, the delimitation of the area of production of the goods on which those certification marks are used or any applicable standard of production.

**Ex. No.1:** An important requirement for certification marks is that the entity that applies for registration be considered impartial and "competent to certify" the products concerned. For instance a certification authority does not have the right to use the mark. A famous example of a certification mark is the Woolmark®, which can be used only on items that are proven to be made of 100% wool.

**Ex. No.2:** Artisans or artists may also use a certification mark to certify that their products comply with a pre-established set of standards defined by the certification authority. Collective and certification marks may both be used together with individual TM of the artisan and artist (ex: certification mark for Maori arts&crafts in New Zealand).

***A few general comments on collective and certification (or guarantee) marks:***

-collective and certification marks provide a certain level of protection for geographical terms generally on the basis of local private initiative, and thus independently from other governmental initiative.

-it is important to mention that whereas descriptive geographical terms standing alone are usually excluded from registration as individual trademarks, the same geographical terms are often acceptable for use with collective or certification marks.

The idea is to avoid reserving the right to use a geographical term to a single individual or firm.

-The question whether a geographical term may be registered as a collective mark or certification mark depends entirely on a given national law (some national laws exclude the registration of geographical names as collective marks or certification marks; or the registration of GI's already protected under a sui generis system as collective or certif. marks).

**\*Industrial designs:**

***Definition: an industrial design refers to the novel aesthetic aspects of a product (outward appearance) in this sense it differs from any technical or functional aspect. It may consist of three-dimensional features shape or configuration of a product (bottles, packaging...); two-dimensional features, such as patterns, lines or colors, or a combination of such features (ex: textile designs, designs for 'Swatch' watches).***

This registration has a specific term: initially five to ten years and renewable for another term of 5 years.

Artisans are advised to consider protecting original packaging that is likely to win the consumer's preference because such protection will entitle them to prevent others from producing packaging with same or similar appearance (ex: shape of a perfume bottle).

Another instrument for collective ownership would be a geographical indication.

\*Geographical indications:

-At the international level, a number of Multilateral Treaties and Regional Regulations provide for the protection of GI's, in particular

- the Paris Convention for the Protection of Industrial Property of 1883
- the Madrid Agreement for the Repression of False and Deceptive Indications of Source
- the Lisbon Agreement for the protection of Appellations of Origin and their International Registration (ex: Algeria, Italy and Tunisia are parties to Agreement)
- Art. 22 to 24 of the WTO Agreement on Trade-Related Aspects of IPR's (TRIPS)
- EC Council Regulation 2081/92 (the Community instrument that installs the concept of AO and GI (PDO and PGI) in European Union Law)

-It is worth mentioning that adherence to TRIPS has had the consequence of introducing specific legal provisions concerning GI's into national legislation. The TRIPS definition is therefore often used by WTO Member States as the basis for their national legislation on GI's.

- Art. 22 of TRIPS: **A GI is a sign used on goods that have a specific geographical origin and possess qualities or a reputation that are fundamentally due to that place of origin.** Most commonly, a GI consists of the name of the place of origin of



the goods. Ex: Agricultural products typically have qualities that derive from their place/region of production and are influenced by specific local factors, such as climate and soil.

-The main purpose of GI's is to demonstrate a link between the geographical origin of a product and a given quality derived from that origin. [definition of a production area]

-The use of GI's is not limited to agricultural raw products. They may also highlight specific qualities of a product which are due to human factors that can be found in the place of origin of the products, such as specific manufacturing skills and traditions. Thus, in all cases a specific link needs to exist between the products and their original place of production.

**Ex. No.1:** That place of origin may be a village or town, a region or a country. A clear example of the latter is "Switzerland" or "Swiss", which is widely perceived as a GI for products that are made in Switzerland and, in particular, for watches.

**Ex. No.2:** GI's may also be used for craft and visual art products from a specific geographical origin if the products in question have a given quality, reputation or other characteristic which is attributable to their geographical origin.

\*Appellation of origin: geographical name of a country, region or locality, used to designate a product that originates there, and that has quality and characteristics that are due exclusively or essentially to the geographical environment, including human and natural factors.

There is a tighter link between the product and the geographical area of production.

Ex: "Talavera de Puebla" is an appellation of origin that designates Talavera pottery, hand-made in the town of Puebla, Mexico.

-Term of Registration: The term is initially for a period of 10 years and can be renewed perpetually.

-Modalities: The GI may be registered by any association of persons or producers or any organization or authority representing the interests of the producers of the concerned goods in the specified region. The application for GI registration is to be made to the designated national authority under the law of geographical indications of that country. Ultimately the State will become the owner of the GI and will control its use (whereas a collective or certification mark is owned and administered by an association or cooperation of producers).

It is to note that the initiative to apply for the registration of an appellation of origin or geographical indication may be taken by entities that are public or private (product consortiums, associations of producers,...). Ultimately, decisions on registration are generally taken by the Ministry in charge of the geographical indications, working in conjunction with the relevant national committee for appellations of origin and/or geographical indications.

### **3- Possible benefits of using such distinctive signs as competition tools (how and why such collective differentiation tools may be used)**

-Face international competition together through quality instead of quantity (market niche and specialty products). Extend the renown of a specific product originating in a determined area, beyond the national borders via joint-marketing activities.

-Create an association of producers, and also an independent body for quality control.

- Pro-active approach: producers should become entrepreneurs (entrepreneurial mindset).
- It is always possible to sub-differentiate within a collective distinctive sign (use one's individual trade name/trademark/label/logo next to the collective distinctive sign). This would allow a further distinction among producers depending on the quality of their products (producer-artist vs. producer-entrepreneur).
- The product specificities/uniqueness should be communicated to the public: marketing, branding campaigns (market the product and the region's story - since when, where, how?). In order to generate an interest in people's minds and help them familiarize themselves with a particular product. They are not only purchasing a random product, but a product in which a long-standing tradition of excellence and know-how is also embodied. Indeed, very often the appealing features of purchased products are initially discovered by consumers through TM and GI's.
- The development and ownership of a collective name will most likely enhance market acceptability of the products and create niche markets, and will also give more confidence to financial institutions.
- Likewise the registration and use of a collective sign promotes the economic prosperity of the producers of goods, which are grown in a specific geographical territory.
- Potential development of an export market for a specific product with distinctive appealing qualities.

As we have seen, as an IPR instrument GI's allow the producers of the products produced in a specified region to stop others from using the geographical name in marketing a product which does not originate from that defined area (wines, champagne...) [not everywhere]. In

this sense it can be said that IPR's provide a proper system of protection against piracy and illegal reproduction/ usurpation of the geographical name (illegal/ deceptive marketing).

*Note: This has been effectively exploited in Europe but is yet to be put into practice in developing nations where traditional goods have been in existence for centuries.*

### **Where to start?**

-On a national level it would be useful to establish an inventory of the country's existing "cultural districts" that should be protected.

-Producers' level: the first step is to secure legal protection for the products originating in a cultural district through the development and registration of distinctive signs such as TM and GI's to avoid any misappropriation by third parties and to build market identity (which basically consists in communicating the essential characteristics of the product to the public).